

1 ANDRÉ BIROTTE JR.  
 United States Attorney  
 2 ROBERT E. DUGDALE  
 Assistant United States Attorney  
 3 Chief, Criminal Division  
 PATRICK R. FITZGERALD (CA Bar Number: 135512)  
 4 Assistant United States Attorney  
 Chief, National Security Section  
 5 JUDITH A. HEINZ (CA Bar Number: 176264)  
 Assistant United States Attorney  
 6 Deputy Chief, National Security Section  
 1300 United States Courthouse  
 7 312 North Spring Street  
 Los Angeles, California 90012  
 8 Telephone: (213) 894-4591/7280  
 Facsimile: (213) 894-6436  
 9 Email: patrick.fitzgerald@usdoj.gov  
 judith.heinz@usdoj.gov

10 Attorneys for Plaintiff  
 11 United States of America

12 UNITED STATES DISTRICT COURT  
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 14 SOUTHERN DIVISION

16 UNITED STATES OF AMERICA,	) Case No. CR 11-833(A)-JST
	)
17 Plaintiff,	) GOVERNMENT'S RESPONSE TO
	) DEFENDANT'S SENTENCING
18 v.	) MEMORANDUM
	)
19 OYTUN AYSE MIHALIK,	) <u>REDACTED VERSION</u>
aka Ayse Oytun Akin,	)
20 aka Ayse Mihalik,	) Sentencing: March 29, 2013
aka "Cindy Palmer,"	) 8:30 a.m.
	)
21 Defendant.	)
	)
	)

23  
 24 Plaintiff, United States of America, by and through its  
 25 counsel of record, the United States Attorney for the Central  
 26 District of California, hereby responds to the sentencing  
 27 memorandum of defendant Oytun Ayse Mihalik, aka Ayse Oytun Akin,  
 28 aka Ayse Mihalik, aka "Cindy Palmer" ("defendant"). Defendant

1 seeks a sentence of 24 months imprisonment, based on defendant's  
2 claims that her criminal conduct was aberrant and the  
3 circumstances of her case are "particularly unique." Defendant  
4 argues that she sent but a small amount of money to Ebu Bera,  
5 over a short period of time, when she was unusually vulnerable to  
6 Ebu Bera's manipulation. Defendant argues that her motivation to  
7 communicate with Ebu Bera was to try to insure that her brother,  
8 who was "on a pilgrimage" to Pakistan, would be treated well at  
9 his destination. Defendant argues that her sending of money to  
10 Ebu Bera was not ideologically motivated because one year earlier  
11 she made a donation to a charity for Turkish soldiers.

12 Defendant's arguments are soundly refuted by the evidence  
13 summarized below [REDACTED]. These  
14 establish that defendant's provision of support for terrorism was  
15 knowing and intentional -- not the product of undue influence or  
16 misguided good intentions, and not aberrant conduct. In fact, as  
17 defendant herself told the FBI shortly after her arrest, she  
18 believed Ebu Yasir was a member of the Taliban and Al Qaeda and  
19 she knew he was using her money for mujahadin operations against  
20 the American military forces in the Afghanistan/Pakistan region,  
21 but this was about "beliefs," and defendant believed sending  
22 money to Ebu Yasir was right because it would keep her in Allah's  
23 good graces. Gov's Exh. A, at 163-164 (attached).

24 **A. Defendant's Criminal Conduct Was Not An Aberration**

25 After living in the United States for several years,  
26 defendant visited her home in Turkey from October 18, 2010, to  
27  
28

1 November 7, 2010. Def's Mem., Exh. D, at 3.<sup>1</sup> While in Turkey,  
2 defendant became involved with another man, Ahmet Kerim Uzbasan  
3 ("Kerim")<sup>2</sup> and adopted a "new religiousness." See Def's Mem.,  
4 Exh. D, at 2; [REDACTED]. Defendant's  
5 mind-set during that time is apparent from [REDACTED]

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]<sup>3</sup> When defendant  
12 returned to the United States in November 2010, she informed her  
13 husband, Errol, that she wanted a divorce. Def's Mem., Exh. D,  
14 at 14. To Errol, it appeared that defendant had embraced Islam  
15 while in Turkey, and that in contrast to her earlier behavior,  
16 upon her return to the United States, she was far more observant  
17 in her religion and she would become upset with "the West."  
18 Def's Mem., Exh. D, at 15. Errol became increasingly concerned  
19 that defendant was "falling toward a more radical interpretation"  
20 of Islam. Id. In fact, Errol was so concerned that he called  
21 the Department of Homeland Security and reported that when he  
22 asked defendant "do you want to harm someone here?" defendant  
23

24 <sup>1</sup> "Def's Mem." refers to defendant's sentencing memorandum,  
25 followed by the exhibit letter designation and internal page  
number within the exhibit as applicable.

26 <sup>2</sup> Defendant would continue this relationship until after  
27 her arrest in this case.

28 <sup>3</sup> Although defendant made a donation to a Turkish Armed  
Forces charity in November 2009, this act pre-dates her apparent  
embrace of Islamic extremism.



1 looked at him and said, "If I have to kill people for Allah, I  
2 will." Gov't Exh. B, at 5 (attached).

3 In December 2010, defendant moved to an extended stay  
4 residence, certain that she wanted to divorce Errol. Def's Mem.,  
5 Exh. D, at 11. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 Thus, defendant's initial e-mail communication to Ebu Bera  
7 stemmed from her desire to participate in jihad like her brother  
8 Onur - not merely from emotional distress or concern about Onur's  
9 well-being.

10 Defendant continued to communicate with Ebu Yasir. See  
11 Def.'s Mem., Exh. H. [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] Thus, defendant knew that the money she sent -  
17 a total of \$2050 - was more than enough to finance an entire  
18 operation against United States military forces.

19 On February 11, 2011, defendant returned to Turkey. It was  
20 Errol's understanding that defendant actively intended to divorce  
21 him. Def's Mem., Exh. D, at 14. On March 21, 2011, while in  
22 Turkey, defendant sent \$2,850 to Ebu Yasir in Pakistan. Gov't  
23 Exh. D. Although the money was intended for Onur, so he could  
24 return to Turkey, defendant understood that it was being sent to  
25 Ebu Yasir's group. Gov't Exh. A, at 163 (attached). When

26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 defendant sent the money, she believed that Ebu Yasir was still  
2 with Al Qaeda, the Taliban, and was fighting jihad against the  
3 United States military. Id.<sup>5</sup> Sometime in March or April 2011,  
4 Kerim told defendant to watch out and be careful because Ebu  
5 Yasir was under investigation in Pakistan. Id. Defendant  
6 believed Ebu Yasir was under investigation because she knew he  
7 was involved in terrorist activities in Pakistan. Id.

8 Defendant returned to the United States on August 8, 2011.  
9 Her laptop computer was imaged at the airport; on it law  
10 enforcement found a "favorite" tab for "The Al Qaeda Manual,"  
11 that the user had viewed the Al Qaeda Manual several times, and  
12 that the user had conducted searches for "true jihad" and "Jihad  
13 in Afghanistan" in "privacy" mode. Gov't Exh. E. It was Errol's  
14 belief that defendant returned to the United States only to  
15 maintain her green card status. Def's Mem., Exh. D, at 14. On  
16 August 26, 2011, defendant went to Los Angeles International  
17 airport, where she attempted to board a flight to return to  
18 Turkey. Defendant had told Errol that she could not take the  
19 oath of allegiance to become a United States citizen,  
20 characterizing this oath as "a blasphemy," and "a mistake against  
21 my religion." Def's Mem., Exh. D, at 2-3. The FBI arrested  
22 defendant at the airport.

23 The FBI interviewed defendant on August 26, 27, and 28,  
24 2011. Defendant made admissions [REDACTED]  
25 [REDACTED]. At no time during these  
26 interviews did defendant indicate in any way that she sent money

1 to Ebu Yasir due to a mistake, confusion, emotional stress, or  
2 undue influence. To the contrary, she stated repeatedly and with  
3 great conviction that she sent the money to Ebu Yasir, knowing  
4 that he intended to use it for mujahedin operations against  
5 United States military forces in the Afghanistan/Pakistan region,  
6 because sending money to Ebu Yasir was right because it would  
7 keep her in Allah's good graces. Gov's Exh. A, at 163-164.

8 **B. Defendant's Other Arguments Do Not Support A Reduced**  
9 **Sentence**

10 Defendant's additional arguments do not justify the 24-month  
11 sentence she seeks. Defendant argues that the application of  
12 sentencing guideline section 3A1.4 (the terrorism adjustment)  
13 causes defendant's criminal history category to be overstated.  
14 However, unlike the defendant in the Benkahla case relied upon by  
15 defendant, here, defendant stands convicted of providing material  
16 support to terrorists - a quintessential terrorism offense -  
17 rather than making false statements. Moreover, because the  
18 statutory maximum sentence here is far below the advisory  
19 sentencing guideline range (324-404 months), the application of  
20 the higher criminal history category is warranted.

21 Defendant argues that the 24-month sentence requested by  
22 defendant is in line with other terrorism cases. It is  
23 impossible to evaluate, however, why the sentences presented by  
24 defendant were imposed, because sentences often are based on  
25 factors not apparent in the public record. This is why the  
26 sentencing guidelines are the starting point and continuing  
27 touchstone for all sentences. See United States v. Ressam, 679  
28 F.3d 1069, 1089 (9th Cir. 2012) (the court must ensure that the



1 justification is sufficiently compelling to support the degree of  
2 the variance). Defendant's suggested radical departure from the  
3 advisory guideline sentence is not justified here.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 DATED: February 8, 2013

11 Respectfully submitted,

12 ANDRÉ BIROTTE JR.  
13 United States Attorney

14 ROBERT E. DUGDALE  
15 Assistant United States Attorney  
16 Chief, Criminal Division

17 PATRICK R. FITZGERALD  
18 Assistant United States Attorney  
19 Chief, National Security Section

20 151  
21 JUDITH A. HEINZ  
22 Assistant United States Attorney  
23 Deputy Chief,  
24 National Security Section

25 Attorneys for Plaintiff  
26 UNITED STATES OF AMERICA  
27  
28

EXHIBITS

Exhibit A: Federal Bureau of Investigation report of post-arrest interview of Oytun Ayse Mihalik on August 29, 2011

Exhibit B: Partial transcript of Errol Mihalik's telephone call on December 27, 2010, to the Homeland Security Investigations tip line (a disc containing the full recorded call is also attached)

Exhibit C:

[REDACTED]

Exhibit D: Western Union record of a money transfer on March 21, 2011, from defendant to a recipient in Pakistan

Exhibit E: List of some material found during a search of defendant's laptop computer on August 8, 2011, at Los Angeles International Airport